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J. GEOFFREY BENTLEY, P.C.

BENTLEY LAW OFFICE
P.O. Box 207 • Herndon, Virginia 20171
(703)793-5207 • (703)793-4978(facsimile)
e-mail: jgblaw@erols.com

J. Geoffrey Bentley
Attorney and Counselor at Law

Admitted in Virginia and
the District of Columbia

February 10, 2000

Magalie Roman Salas
Secretary
Federal Communications Commission
The Portals
Washington, D.C. 20554

Re: MM Docket Nos. 00-10 and 99-292, RM-9260

Dear Ms. Salas:

On behalf of Sonshine Family Television, Inc., I am submitting herewith an original and four copies of Comments in response to the FCC's *Notice of Proposed Rule Making* ("*NPRM*") in the above-captioned proceeding, FCC 00-16, released January 13, 2000. I am submitting, also, four additional copies in the comments, reflecting the second docket number and rulemaking petition number listed in the caption.

Any questions concerning this matter should be directed to me.

Sincerely,

J. Geoffrey Bentley

Attorney for Sonshine Family Television, Inc.

Enclosures

Messenger and Overnight Delivery to 2700 Copper Creek Road, Herndon, VA 20171

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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Establishment of a Class A	)	MM Docket No. 00-10
Television Service	)	MM Docket No. 99-292
	)	RM-9260
	)	

To: The Commission

COMMENTS OF SONSHINE FAMILY TELEVISION, INC.

Sonshine Family Television, Inc. ("SFTI"), licensee of television broadcast station WBPH, Channel 60, Bethlehem, Pennsylvania, through counsel, hereby submits these Comments concerning the FCC's *Notice of Proposed Rule Making* ("*NPRM*") in the above-captioned proceeding, FCC 00-16, released January 13, 2000.

In its *Sixth Report and Order* in MM Docket No. 87-268, FCC 97-115, released April 21, 1997, the FCC allotted Channel 59 to Bethlehem, Pennsylvania, as a paired channel allotment for WBPH's DTV operation.[1] This paired allotment of Channels 59 and 60 makes WBPH one of only a handful of television stations with both its NTSC and DTV allotments outside the so-called "core spectrum," Channels 2-51, within which all television broadcasting must be accommodated at the conclusion of the transition to DTV, currently scheduled to occur in 2006.

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[1] SFTI has filed its initial application for authority to construct DTV facilities, File No. BPCDT-19991101HO.

This circumstance makes WBPH and a few others (believed to be a total of 17 television stations) uniquely affected by the provisions of the Community Broadcasters Protection Act (the "CBPA"). The potential effects of Class A low power television stations licensed pursuant to the CBPA on WBPH's future DTV operation are dependent on two conditions set forth in new Section 336(f)(1)(D) of the Communications Act. Those provisions direct the FCC, in mandatory terms ("the FCC *shall* make such modifications as necessary . . .;" 47 U.S.C. § 336(f)(1)(D) (emphasis supplied)) to the service areas of Class A LPTV stations to ensure replication of a full-power digital television station's existing service area (47 U.S.C. § 336(f)(1)(D)(i)) and to permit "maximization" of a full-power digital station's service area (47 U.S.C. § 336(f)(1)(D)(ii)) *if* the full-power station has filed a notice of intention to seek such maximization on or before December 31, 1999, and also files a "bona fide application for maximization" on or before May 1, 2000.

Pursuant to the FCC's *Public Notice*, "Mass Media Bureau Implements Community Broadcasters Protection Act of 1999," released December 13, 1999, SFTI filed a letter with the FCC on December 30, 1999, stating its intention to seek to maximize its facilities. The filing of a maximization application, however, is problematic, because both WBPH's allotments are outside the core spectrum and SFTI will be unable to identify a channel within the core spectrum for future operation until the end of the DTV transition period. While SFTI could, in theory, file an application on or before May 1, 2000, for maximum facilities for WBPH-DT on Channel 59, that application (and the facilities constructed pursuant to FCC approval of that application) would be irrelevant to the spectrum consequences of post-transition operation with maximum facilities somewhere within the core spectrum. (Presumably, WBPH-DT would move, at the end of the transition period, to one of the NTSC or DTV channels in the core spectrum made available because of abandonment by a full-

power licensee required to elect one of its paired channels for future operation. But the service area of the previous occupant would be unlikely to have even a coincidental relationship to the maximized service area of WBPH-DT, particularly as WBPH is the only full-power television station licensed to Bethlehem, Pennsylvania.)

The *NPRM* raises the appalling prospect (¶ 34) that stations with NTSC and DTV allotments that are both outside the core spectrum may not, consistent with the provisions of the CBPA, be able to preserve their right to maximize their DTV service areas on a future in-core channel. If this interpretation were correct, the FCC would create a permanent class of "second-class" DTV stations.

There is no reason to believe this is what Congress intended. Indeed, in the preceding paragraph of the *NPRM* (¶ 33), the FCC refers to "the intent of Congress to protect the ability of DTV stations to replicate and maximize service areas." This intent is manifest from Congress's mandate to the FCC, previously noted, to "make such modifications *as necessary*" (emphasis added) to LPTV service areas. Neither that provision of the statute nor the accompanying Conference Report, H. Rept. No. 106-464, *Congressional Record*, November 9, 1999, p. H11769 (the "House Conference Report"), at H11809, suggests that Congress intended to preserve the right to maximize facilities for "some but not all" DTV stations. In addition, in a clear statement of intention to maximize the use of all of the core spectrum, the CBPA specifically directs the FCC not to issue a Class A license on any of 175 channels referenced in the *Memorandum Opinion and Order* (the "*MO&O*") on reconsideration of the Sixth Report and Order in MM Docket No. 87-268, FCC 98-24, released February 23, 1998, ¶ 44. As the FCC observes in the *NPRM*, ¶ 25, these channels will be part of the spectrum reclaimed at the end of the transition when existing stations end their dual channel analog TV/DTV operation and begin providing only DTV service on a single channel." While some

of those channels will be auctioned to applicants for new DTV facilities, *MO&O*, ¶ 44, that inventory must satisfy the needs of stations such as WBPH whose dual channel operation has been outside the core spectrum during the transition period. By directing the FCC to, effectively, embargo that spectrum, Congress has shown that it intends to preserve the opportunity to maximize facilities for all DTV stations.

Pararaph 34 of the *NPRM* creates an additional concern insofar as it appears to assume that any in-core "maximization rights" for out-of-core DTV stations are dependent on maximization of the station's facilities on the assigned out-of-core channel. From a spectrum management perspective, there is no reason to require licensees, as a condition of maximization on an in-core channel, to first maximize facilities on an out-of-core channel, because such maximization, as pointed out in the preceding paragraph, cannot be used to predict which Class A LPTV stations might be affected by post-transition in-core operation. Indeed, a requirement that stations such as WBPH construct maximum out-of-core facilities as a condition of in-core maximization rights would impose a substantial economic penalty on independent, smaller market and independent stations who would thereby be required to build a temporary maximum-facilities station as well as a permanent one.

It is noteworthy that new Section 336(f)(7) of the Communications Act, which directs the FCC not to grant an application for a Class A license unless the applicant shows, among other things, that the station will not cause interference to "stations seeking to maximize power under the Commission's rules, if such station has complied with the notification requirements in paragraph (1)(D)" and does not mention the obligation of the DTV station to file a maximization application at all. Similarly, the Conference Report, in addressing this section of the statute, refers only to the "notification requirements." *House Conference Report* at H11809.

In its rules implementing the CBPA, the FCC, therefore, should recognize that, for stations forced to operate during the transition on both analog and DTV channels that are outside the core spectrum, the requirement to file a "maximization" application on or before May 1, 2000, as a condition of the right to build maximum facilities on a future in-core DTV channel allotment serves no compelling public interest purpose. This outcome is perfectly consistent with Congress's purpose of preserving the opportunity to maximize for all DTV stations. While this may create some degree of uncertainty for some Class A LPTV licensees, there is no doubt that Congress intended that the service areas of Class A stations would still remain secondary to the maximization of DTV service areas of full-power stations who, in good faith, filed notifications of their intention to maximize.

In all probability, the actual disruption of Class A television stations will be minimal, as there are no more than a handful of full-power stations with both analog and DTV allotments outside the core spectrum whose DTV operations will have to be accommodated in the core. (The actual number of stations may be smaller, if not all of them filed notices of their intention to maximize on or before December 31, 1999.) The FCC can further minimize the potential impact by requiring full-power stations requiring new, post-transition allotments in the core spectrum, to demonstrate that maximization of DTV facilities on the channel applied for will have the least potential adverse effect on licensed Class A LPTV stations.

SUMMARY

The rules adopted by the FCC to implement the CBPA, therefore, should preserve the right of all full-power stations, including those whose analog and DTV allotments are both outside the DTV spectrum, to operate with maximum facilities in the core spectrum following the transition to

full DTV operation. If it does otherwise, the FCC will create a permanent class of "second class" DTV allotments not intended by Congress. The FCC, moreover, should avoid imposing unnecessary burdens on such full-power licensees by holding that, where both the analog and DTV allotments are outside the core spectrum, preservation of maximization rights does not require the filing of a maximization application on or before May 1, 2000.

Respectfully submitted,

SONSHINE FAMILY TELEVISION, INC.

By _____
J. Geoffrey Bentley

J. Geoffrey Bentley, P.C.
BENTLEY LAW OFFICE
P.O. Box 710207
Herndon, Virginia 20171
(703)793-5207
(703)793-4978 (fax)

Its Attorney

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